

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)
)
)
Application for a Certificate of Public)
Convenience and Necessity, pursuant to)
Section 8-406.1 of the Illinois Public Utilities)
Act, and an Order pursuant to Section 8-503)
of Illinois Public Utilities Act, to Construct,)
Operate and Maintain a new 345 kilovolt)
transmission line in Ogle, DeKalb, Kane)
and DuPage Counties, Illinois)

Docket No. 13-0657

**REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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**REPLY BRIEF OF THE STAFF
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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”) (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief (“Staff RB”) in the instant proceeding.

I. Background

On December 2, 2013, Commonwealth Edison Company (“ComEd” or “Company”) filed a Verified Petition (“Petition”) and testimony in support of a Certificate of Public Convenience and Necessity (“CPCN” or “Certificate”) to install, operate, and maintain an overhead 345 kilovolt (“kV”) electric transmission line in Ogle, DeKalb, Kane, and DuPage Counties, pursuant to Section 8-406.1 of the Illinois Public Utilities Act (“PUA” or “Act”), 220 ILCS 5/8-406.1. ComEd also requested a Commission Order

pursuant to Sections 8-406.1 and 8-503 of the PUA, 220 ILCS 5/8-406.1 and 220 ILCS 5/8-503, authorizing or directing ComEd to construct the transmission line and related facilities. ComEd refers to the proposed line and related work as the Grand Prairie Gateway Transmission Line Project (“Grand Prairie Gateway Project,” “Project,” or “GPG”). (Petition, 1.)

Initial Briefs (“IB”) were filed on April 30, 2014 by: Staff; ComEd; Wind on the Wires; the Illinois Industrial Energy Consumers; William, Christine and Patrick Deutsch; Jerry Drexler and Kristine Drexler; William Lenschow, Thomas and Kristin Pienkowski, Robert and Diane Mason, John Tomasiewicz, Ellen Roberts Vogel, and Utility Risk Management Corporation (“URMC”); the City of Elgin; and Charles, Susan and Jeffrey Payne.

Staff’s IB identified and addressed many, if not most, of the arguments raised in the other parties’ IBs. In this Reply Brief, Staff has incorporated many of those responses by reference or citation to Staff’s IB. However, in the interest of brevity, Staff has not raised and repeated every argument and response previously addressed in Staff’s IB. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff’s IB because further or additional comment is neither needed nor warranted.

II. Argument

A. ComEd has Not Shown that the Project is Necessary to Provide Adequate, Reliable, and Efficient Service to the Public Utility’s Customers and is the Least-Cost Means of Satisfying the Service Needs of the Public Utility’s Customers

In its initial brief, ComEd asserts that the Project “delivers reliability and operational benefits,” and that while the “reliability benefits were not the drivers of the

Project, they are meaningful nonetheless.” (ComEd IB, 16; Staff Ex. 2.0, 6, 9.) Moreover, ComEd further asserts that “none of these [operational and reliability] benefits are questioned by Staff.” ComEd IB, 16. These assertions ignore and contradict Staff’s direct testimony. Therein Staff makes it clear that ComEd had not shown the Project was necessary to provide adequate, reliable, and efficient service and is the least-cost means of satisfying the service needs. (Staff Ex. 2.0, 6-9.)

Significantly, in its initial brief, ComEd did not disagree with Staff witness Mr. Rashid’s conclusion that the Project is not required for physically adequate, efficient, and reliable service. (ComEd Ex. 9.0 CORR., 6-7; Staff Ex. 2.0, 6-9.) Specifically, ComEd stated: “ComEd has never claimed that the GPG Project is justified based on any deficiency in the capacity or reliability of the transmission system. . . . ComEd has always been clear that the Project serves the public convenience and necessity not because of . . . reliability or operational benefits.” (ComEd Ex. 9.0 CORR., 6-7.)

As such, the Commission need not address whether the Project is necessary to provide adequate, reliable, and efficient service and is the least-cost means of satisfying the service needs. Should the Commission choose in its discretion to do so, however, then the Commission should find that ComEd did not satisfy its burden of proof to show that the Project is necessary to provide adequate, reliable, and efficient service and is the least-cost means of satisfying the service needs. Staff IB, 17.

B. Notice to Landowners of Intervenor Proposed Routes and Alternate Routes

The Intervenor presented route or route segment alternatives in this proceeding. There is no evidence, however, that the landowners affected by these adjustments, who would otherwise be unaffected by the primary or alternative routes presented by

ComEd, received notice of the proposals. Should the Commission decide to choose one of these routes, further proceedings would be required to provide adequate notice to all affected landowners.

In a similar docket, the Administrative Law Judges required landowners proposing alternate routes or route segments to provide notice to any affected landowner not already noticed. ATXI Petition for CPCN, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Public Utilities Act, Case Management Plan at 4, ICC Docket No. 12-0598 (Dec. 14, 2012). No such notification was required in this instant proceeding, and no evidence was presented that such landowners were notified of the proposed routes. See Notice of Continuance of Hearing and Notice of Schedule (Dec. 30, 2013).

The Intervenor URM and various individuals argue that the “Commission has accepted adjustments utilizing” “a feedback process that relied on the notice of the proceedings and the ability for parties to submit rebuttal testimony,” citing to the Commission’s decision in ICC Docket No. 06-0179. (URM IB at 25.) The Commission, however, did *not* accept adjustments to proposed transmission routes suggested by interested parties in testimony without notice to affected landowners in that proceeding. Illinois Power Company d/b/a Ameren IP and Ameren Illinois Transmission Company, Final Order, ICC Docket No. 06-0179, 16 (May 16, 2007) (“06-0179 Order”). While the Commission did not address the need for, or lack of, notice with regard to the routes or route segments suggested by Intervenor in its Final Order, the Commission approved one such suggested route segment only after notice and an opportunity to participate in the proceeding had been provided to landowners not previously implicated by the

original proposed routes. *Id.* at 16; Illinois Power Company d/b/a Ameren IP and Ameren Illinois Transmission Company, Correspondence, ICC Docket No. 06-0179 (July 25, 2006) (“06-0179 Correspondence”). That is, the parties affected by alternate routes proposed by Staff and Intervenors, but not previously notified of the proceeding since they were not affected by the petitioner’s proposed routes, were separately notified by the *petitioner* in that proceeding of the alternate routes proposed by Staff and Intervenors. (06-0179 Correspondence.) Those “new” landowners were then given the opportunity to participate in that proceeding. Illinois Power Company d/b/a Ameren IP and Ameren Illinois Transmission Company, Notice of Continuance of Hearing, ICC Docket No. 06-0179 (August 4, 2006).

In the instant proceeding, it appears neither the Petitioner nor the Intervenors provided notice to newly affected landowners on the Intervenors’ proposed route alternatives. While URMIC is correct that there is no explicit requirement for Intervenors to so notify newly affected landowners, Staff believes the spirit of the notification requirements requires notification to newly affected landowners. See URMIC IB at 25; 220 ILCS 5/8-406.1; 83 Ill. Admin. Code § 200.150(h). Therefore, Staff is concerned about the ability of those individuals to represent their interests with regard to the proposed routes. See 83 Ill. Admin. Code § 150(h).

Additionally, Intervenors William Deutsch, Christine Deutsch, and Patrick Deutsch (“Deutsch”) request that the Commission “withhold its decision on the final route through Sycamore and Burlington Townships for four months” to allow them to “finalize” discussions with the Forest Preserve District of Kane County; the request should be ignored as contrary to the requirements of Section 8-406.1 of the Act.

(Deutsch IB at 8); see 220 ILCS 5/7-406.1. While the Commission may determine other landowners' lack of notification requires an extension of the docket deadline, as discussed below, doing so merely to allow a properly notified, participating Intervenor to extend negotiations necessary for its proposed alternate route would be counter to the legislative intent behind the statutory case deadline. 220 ILCS 5/8-406.1(g).

C. ComEd Filing Deficiency

ComEd has asserted that it "satisfied the pre-filing requirements applicable under Section 8-406.1." (See ComEd IB at 5.) ComEd failed to mention, however, that it did not satisfy the pre-filing requirements of the Commission's Rules of Practice applicable to petitions under Section 8-503. Specifically, ComEd failed to satisfy the requirement that it provide the names and addresses of landowners to the Commission and that those names and addresses must be pulled from county tax assessor's records no more than 30 days before the filing. 83 Ill. Admin. Code § 200.150(h). ComEd admits only in its Supplement to Verified Petition of Commonwealth Edison Company ("Supplement"), filed May 1, 2014, that it failed to satisfy that requirement. (Supplement at 2.)

Similarly, ComEd has admitted only in its Supplement that it, in fact, did not satisfy at least one filing requirement under Section 8-503, despite making assertions that it had satisfied all the procedural pre-requisites of Section 8-406.1 in its Initial Brief. *Id.*; (ComEd IB at 19.) Importantly, ComEd petitions under both Sections of the PUA, and must satisfy the pre-requisites of the rules and regulations applicable to both Sections. ComEd has failed to do this. See 83 Ill. Admin. Code § 200.150(h).

III. Conclusion

WHEREFORE, for the reasons set forth in its Initial Brief and this Reply Brief, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect all of Staff's recommendations regarding the Company's Petition.

Respectfully submitted,

/s/

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